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April 17, 2017

Via ECF

The Honorable Sarah Netburn
Thurgood Marshall United States Courthouse
40 Foley Square, Room 430
New York, NY 10007

Re: *In re Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)
(All Actions)

Dear Judge Netburn:

The Kingdom of Saudi Arabia (“Saudi Arabia”), with the concurrence of the Saudi High Commission for Relief of Bosnia & Herzegovina (“SHC”), writes in response to the proposal by the Plaintiffs’ Executive Committees (“PEC”) of a short-form method for Plaintiffs to adopt the Consolidated Amended Complaint (“CAC”). *See* Letter, ECF No. 3519 (Apr. 14, 2017); Proposed Order Approving Notices To Conform and Short Form Complaints, ECF No. 3519-3 (“Proposed Order”) (superseding ECF No. 3502-3). Although Saudi Arabia and the SHC endorse a streamlined process for new plaintiffs to adopt the CAC, they respectfully wish to reserve their rights in two respects.

First, the Proposed Order includes a “Short Form Complaint and Demand for Jury Trial for use by plaintiffs who have not filed suit to initiate suit against Saudi Arabia [and the SHC] pursuant to the CAC.” Letter at 1; *see* Proposed Short Form Complaint and Demand for Trial by Jury, ECF No. 3519-2 (“Short Form”) (superseding ECF No. 3502-2). The Short Form invites conclusory pleading as to allegations of injury and causation by checking boxes and filling in a few lines of text. *See* Short Form ¶¶ 5(c) (providing for Plaintiffs to adopt the one-sentence allegation that “Plaintiff was injured as a result of the terrorist attacks of September 11, 2001”), 5(d) (providing for Plaintiffs to adopt allegations such as “Plaintiff was present at the World Trade Center site . . . and/or at an area wherein he/she was exposed to toxins as a result of the terrorist attacks . . . and/or was otherwise injured” or to “otherwise allege[]” injury in half a line of text), 5(e) (providing for Plaintiffs to allege without elaboration that, “[a]s a direct, proximate and foreseeable result of Defendants’ actions or inactions, Plaintiff suffered bodily injury and/or death, and consequently economic and other losses, including but not limited to pain and suffering, emotional distress, psychological injuries, and loss of enjoyment of life” or to “otherwise allege[]” injury in half a line of text).

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As new plaintiffs join the litigation, some of whom allege injuries resulting from extended theories of causation, Saudi Arabia and the SHC wish to reserve their rights to test the sufficiency of such allegations should it become necessary to do so. The extremely brief pleading contemplated by the proposed Short Form is unlikely to allege such injuries in sufficient detail. Accordingly, Saudi Arabia and the SHC respectfully request that, if the Court issues an order along the lines of the PEC's proposal, it contain language along the following lines: "Plaintiffs may wish to append additional sheets to this form in order to adequately describe how their injuries were caused by the attacks of September 11, 2001, and the nature of the harm they have suffered." Saudi Arabia and the SHC further request that the Court add a disclaimer stating: "This Order does not decide whether a completed Short Form will constitute an adequate complaint under applicable pleading standards."

Second, Saudi Arabia and the SHC also object to the following sentence in the Proposed Order: "Upon service of the Short Form Complaint upon the defendants via ECF, the Short Form Complaint shall be deemed to have been served." Proposed Order at 3. Saudi Arabia and the SHC have a statutory right to service of process under 28 U.S.C. § 1608 that they do not wish to waive on a categorical basis. To be clear, Saudi Arabia has waived service of process every time it has been asked to do so since the passage of the Justice Against Sponsors of Terrorism Act, and both Saudi Arabia and the SHC anticipate that they will continue to do so as appropriate requests are made. But they reserve their right to deny such requests, and they object to the Proposed Order that would deny them that right for an indefinite period of time. Defendants accordingly propose to replace the sentence with: "After filing of the Short Form Complaint via ECF, the filing plaintiffs shall timely submit an appropriate request for waiver of service to counsel for Saudi Arabia and the SHC."

Thank you for your consideration.

Respectfully submitted,

/s/ Michael K. Kellogg

Michael K. Kellogg

cc: Chambers of the Honorable George B. Daniels (via ECF and facsimile)
All MDL Counsel of Record (via ECF)